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EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW

**Presentation of Summaries
of the Bulletin on Constitutional Case-Law
- Formal and Methodological Aspects -**

Note of the Secretariat

The present note is a commentary on certain aspects of the "Study on the possibilities for improving and developing the *Bulletin on Constitutional Case-Law* and on establishing a computerised data bank on this case law" by Messrs R. Ryckeboer and P. Vandernoot (CDL-JU (94) 2).

The Secretariat welcomes this thorough study which sets out the framework and the principles for the future development of the Bulletin. The Secretariat entirely shares the considerations and conclusions of the authors of the study.

With a view to making more information directly available to the readers of the Bulletin the Secretariat wishes to submit to the Sub-Commission on Constitutional Justice two points on which the Secretariat's view slightly differs from that of the authors of the study:

1. Introductory Part of the Contributions

In the Secretariat's view, the introductory part should be retained, while, at the same time, liaison officers should be free to choose the information they want to include in this part. This information may still be of statistical nature, as it mainly is now, or it may concern other issues (changes in the composition of the court, new laws or regulations concerning the court, publications, seminars etc.).

2. Presentation of the Summaries

Zone 4: The keywords of the alphabetical index must be different from those of the systematic thesaurus. Mere repetitions should be avoided.

Zone 5 and 6: The Secretariat proposes to have two zones dealing with the content of decisions, one zone containing the headnotes (Sommaires de jurisprudence/Leitsätze/Massime) and one zone summarising the decision:

Zone 5: Headnotes:

- They should not contain extracts of the decision, but a summary, in no more than two or three sentences, of the main contents of it;
- One decision may be the subject of several headnotes;
- The information contained in the headnote should be general and not contain any references to the particular context of the case;
- The headnote should only indicate the content of legal norms, not its references (for example the article number of the Constitution);
- Legal concepts should be qualified using terminology common to the majority of legal systems.

Zone 6: Summary of the decision

- The summary should briefly describe the main facts of the case, the procedure followed, the main legal reasoning (*ratio decidendi*) and the decision taken.

In order to avoid any misinterpretations as to the nature of the headnotes and summaries of decisions, it is proposed to include in the Bulletin a statement that the headnotes and summaries do not bind the courts and are not to be regarded as "interpretations" of the courts' decisions.

Compared with the proposals in the study by Messrs Ryckeboer and Vandernoot, the proposed modifications are made with a view to making the Bulletin more accessible to the reader and more efficient in its role to disseminate information on the activities and case law of the constitutional courts.

It should be emphasised that the users of the Bulletin will in most cases not have any access to the decisions which are summarised in the Bulletin.

In many cases, even the libraries of constitutional courts do not contain the official collections of all the other contributing courts. Only the bulletins or collections of certain courts which are published in easily accessible languages are widely available. The full text of constitutional court decisions is only rarely translated into other languages.

Under these conditions, the user of the Bulletin will in most cases be restricted to the information contained in the Bulletin itself. He or she will not be able to consult the full text of the decision and will therefore have only a partial understanding of the context of the case. Depriving the reader from any information concerning the facts, the procedure and, above all, the legal reasoning followed might affect the utility of the Bulletin. In the long term, this difficulty might also affect the utility of the data base.

It seems therefore useful to publish not only passages of decisions, but full summaries in order to broaden the information disseminated by the Bulletin.